

# **CONCISE EXPLANATORY STATEMENT**

September 14, 2004 and September 17, 2004 Public Hearing  
December 21, 2004 Adoption

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After the department adopted rules protecting flaggers in construction sites in January 2001, WISHA received requests from stakeholders to review the rules regulating protection of construction workers on the construction sites. There have been 6 fatalities since 1999 that could have been prevented with rules that are more protective of construction workers. The rule is intended to reduce or eliminate the number of serious injuries and fatalities by increasing worker protection from vehicular traffic on construction sites. In May and September of 2004, the Department filed emergency rules to address the six preventable fatalities since 1999. In all of these fatalities, workers were backed over by dump trucks.

The department received public comment on the following sections and modified the proposed amendments to these sections as indicated below.

## **WAC 296-155-200, General requirements for personal protective equipment (PPE)**

- Removed the PPE tables in this section to provide consistency with the presentation of these requirements in WAC 296-155-305, Signaling and Flaggers.
- Reformatted the PPE requirements and information from the removed tables into subsection (5), High visibility garments.
- Moved the definition of “Hours of darkness” to WAC 296-155-200(5)(a).

## **WAC 296-155-300, Accident prevention signs and tags**

- This section was repealed on August 31, 2004 with rulemaking on chapter 296-24 WAC, Safety Standards for General Safety and Health.

## **WAC 296-155-305, Signaling and flaggers**

- Clarified the definition of “MUTCD” to state, “For purposes of this chapter, MUTCD means the Federal Highway Administration’s Manual on Uniform Traffic Control as currently modified and adopted by the Washington State Department of Transportation.”
- Updated references to the MUTCD throughout the section allowing the definition at the beginning of the section to apply to all other references.
- Added an additional link to the MUTCD page of the Department of Transportation’s website.
- Removed the example, “Use a motion detector with an audible warning” from the note in subsection (4), Adequate warning of approaching vehicles.
- Updated the title of Table 1 to read, “Advanced Warning Sign Spacing.”
- Reformatted the exemption in subsection (8), Advance warning signs. This clarifies that the statement “If terrain does not allow a motorist to see the flagger...” applies to the exemption for mobile operations.
- Updated the language in the exemption in subsection (8), Advance warning signs, to read, “If terrain does not allow a motorist to see the flagger from the ‘flagger ahead’ sign, the distance between the flagger and the sign must be shortened to allow visual contact, but in no case can the distance be less than the distance specified in Table 1, Advance Warning Sign Spacing.”

- Updated the title of Table 2 to read, “Distance of Flagger Station in Advance of the Work Space.”
- Added a note to Table 2 in subsection (9), Providing a safe job site for flaggers, to read, “This spacing may be reduced to fit roadway and worksite conditions. Distances greater than those listed in the table are acceptable.”

**WAC 296-155-310, Barricades**

- Updated references to the MUTCD throughout the section allowing the definition in WAC 296-155-305 to apply to all references.

**WAC 296-155-610, Motor vehicles on construction sites**

- The illustration in subsection (f), Operating dump trucks in reverse, was updated. The distance directly to the rear of a backing dump truck requiring an observer was rounded down from 35.9 feet to 35 feet.

**WAC 296-155-655, General protection requirements**

- Clarified the intent of the requirement by deleting the word “public” in subsection (4), Exposure to vehicular traffic. This provides consistency with the requirements in WAC 296-155-200, General requirements for personal protective equipment (PPE).

Summary of all comments received by proposed WAC section and agency response

Comment Received	Agency Response
<p>A commenter believed that there are no clearly stated rules, policies or guidance on how to control a multi-lane road with flaggers. They asked where or how to station a single flagger if you have 3 or more lanes in one direction. They added that if a flagger is on fog line, the flagger is not visible to outside lanes. The stated that city or controlling authorities are reluctant to close lanes on main road.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The Manual on Uniform Traffic Control Devices, used in conjunction with WAC 296-155-305, Signaling and Flaggers, provides guidance. The principles of traffic control are the same whether the employer is using flaggers or not. In the situation the commenter addresses, traffic should be channeled into a single lane. As a result, the flagger would be able to control the traffic.</p>
<p>A commenter suggested that WISHA rules should clearly state that unless there is an emergency, flaggers should never be stationed in the middle of an intersection. Only law enforcement can do that.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The proposed WAC 296-155-305 (9)(b) requires employers to make sure flaggers stand either on the shoulder adjacent to the road user being controlled or in a closed lane prior to stopping road users. The department believes that this requirement addresses the commenter's concern.</p>
<p>A commenter believed that RCW 46.61.030 exempts the required use of seatbelts (RCW 46.61.688) in vehicles when working within the highway right of way. They proposed that his exemption be incorporated into L&amp;I's proposed changes to WAC's 296-155-610 and WAC 296-155-615.</p> <p><b>RCW 46.61.030</b>  <b>Persons working on highway right of way -- Exceptions.</b>            Unless specifically made applicable, the provisions of this chapter except those contained in RCW <a href="#">46.61.500</a> through <a href="#">46.61.520</a> shall not apply to persons, motor vehicles and other equipment while engaged in work within the right of way of any</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The Washington State Patrol regulates motor vehicles operated on public roadways. The Department of Labor and Industries regulates motor vehicles operated on any worksite, including public roadways. Chapter 46.61 RCW, which the Washington State Patrol enforces, provides an exemption for seat belt use during work where motor vehicles are operated within the right of way of any highway.</p> <p>The Department of Labor and Industries has chosen not to</p>

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<p>highway but shall apply to such persons and vehicles when traveling to or from such work.</p>	<p>provide an exemption for seat belt use during work where motor vehicles are operated within the right of way of any highway. Motor vehicle accidents remain one of the highest causes of workplace fatalities and injuries. The department believes that providing an exemption for seat belt use in this situation would result in less protection to workers. The department has provided an exemption for seat belt use in WAC 296-155-615, Material handling equipment. This section exempts equipment designed only for standup use from the requirement to provide and use seat belts.</p>
<p>A commenter pointed out that the language in WAC 296-155-305 (2)(b) indicates you must use flaggers or "other appropriate traffic controls". The commenter asked if there was any guidance as to what "other appropriate traffic controls" might consist of.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The MUTCD details other types of controls and provides guidance. The MUTCD is available at <a href="http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm">http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm</a>.</p>
<p>A commenter explained that WAC 296-155-305 (3)(a) states "Flagger signaling must be with sign paddles..." The commenter believed that work during in an intersection, such as workers changing lights in traffic signals, this would be difficult, if not impossible.</p> <p>The commenter stated that traffic control may be needed in the intersection while the workers perform this short-duration task and believed that was not realistic to send one flagger for each street entering the intersection and using one flagger, with a sign paddle, could create a lot of confusion for the road users.</p> <p>The commenter suggested that flaggers could use only their hands to clearly direct the traffic, much as a police officer would do.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>WAC 296-155-305(9)(b) requires flaggers to be either on the shoulder or in a closed lane. This standard does not allow flaggers to be in the center of an intersection. In addition, WAC 296-155-305(3)(a) requires flaggers to use a sign paddle when flagging. The Manual on Uniform Traffic Control Devices offers other traffic controls that can be implemented.</p>
<p>A commenter explained the last sentence of WAC 296-155-305</p>	<p>The department agrees with the commenter. The intent of this</p>

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(4) indicates "...that flaggers have adequate visual warning of objects approaching from behind them." One of the optional examples of methods to warn flaggers is "Use a motion detector with an audible warning." The commenter believed that this language was held over from the prior regulations. The commenter asked if the flaggers must actually have <i>visual</i> warning of objects approaching from behind.	section was to make sure that flaggers have visual warning of objects approaching from behind them. As a result, the adopted version of WAC 296-155-305 does not reference a motion detector as an optional example of a warning device.
A commenter asked if there was any exemption for short-duration work in WAC 296-155-305 (8)(a). The commenter stated an example where they believed this would be useful. A large truck backing out of a construction site and blocks traffic when doing so. Some people would like to be able to get a flagger out there to stop the traffic for a few moments to help the truck get out. The commenter believed that it isn't realistic to go set up a series of 3 or 4 signs for the few moments it would take the truck to back out.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>There is no exemption in WAC 296-155-305, Signaling and Flaggers, that would apply to the situation the commenter proposes. In the situation the commenter addresses, if an individual chooses to control motoring public, they meet the definition of a flagger in this rule. As a result, the requirements of WAC 296-155-305, Signaling and Flaggers, apply to the individual and the worksite.</p>
Several commenters asked if in WAC 296-155-305 (8)(c) the table title was wrong. The proposed version's title was "Flagger Station Location." Commenters believed that the table addressed sign location.	The department agrees with the commenters. As a result, Table 1 in the adopted version on WAC 296-155-305 (8)(c) has been changed to "Advanced Warning Sign Spacing."
A commenter asked if the statement "If terrain does not allow a motorist to see the flagger from the 'flagger ahead' sign..." applies just to mobile operations or to all operations. The commenter stated that complying with this point might be difficult in some circumstances. For example in King County has some fairly winding roads. I realize that you don't want to have a flagger right around a bend. On occasion it is difficult to prevent that, because if you move the flagger one way or another, so they're not right around the bend, you end up with them right around a different bend. Anyway, if the flagger must	The department has reformatted and reorganized this section to clarify that the statement "If terrain does not allow a motorist to see the flagger from the 'flagger ahead' sign..." only applies to mobile operations.

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<p>be in view from the sign, you could potentially end up with the sign quite close to the flagger.</p>	
<p>The commenter asked if it might provide better protection to the flagger if the sign was slightly more ahead of the flagger, even when the flagger was not visible from the sign.</p>	<p>The department agrees with the commenter. The requirements in WAC 296-155-305, Signaling and Flaggers, provide the minimum level of protection for flaggers. While the requirements in WAC 296-155-305, Signaling and Flaggers, apply, in this situation, the department encourages employers to add additional signs if necessary.</p>
<p>Several commenters asked if Table 2 in WAC 296-155-305 (9)(a) has a typo in the title of the table. They believed that the correct title should be "Distance of Flagger Station in Advance of the Work Space."</p>	<p>The department agrees with the commenters. As a result, the title in Table 2 of the adopted version of WAC 296-155-305, Signaling and Flaggers, states "Distance of Flagger Station in Advance of the Work Space."</p>
<p>Several commenters asked Table 2 in WAC 296-155-305 (9)(a) represented minimum spacings or suggested spacings. They also requested that the department add flexibility to these spacings, similar to the language in Table 1.</p>	<p>The department agrees with the commenter. As a result, the adopted version of WAC 296-155-305, Signaling and Flaggers, has an added note to this table stating "This spacing may be reduced to fit roadway and worksite conditions. Distances greater than those listed in the table are acceptable."</p>
<p>A commenter stated that some flaggers object to the requirement in WAC 296-155-305 (9)(b). The commenter stated that flaggers feel strongly that, at times, they need to stand in the lane of traffic to stop them.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The department believes that allowing flaggers to stand in the middle of an open lane of traffic creates unnecessary exposure to the flagger. WAC 296-155-305 (9)(b) requires that flaggers stand either on the shoulder adjacent to the road user being controlled or in a closed lane. In the situation the commenter addresses, the department suggests the use of other traffic control devices to help bring attention to the flagger.</p>
<p>A commenter stated that throughout the different sections of chapter 296-155 WAC there are different versions of referencing</p>	<p>The department agrees with the commenter. As a result, the adopted version of WAC 296-155-305, Signaling and</p>

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the MUTCD.	Flaggers, has one definition of the MUTCD that applies to any reference of the Manual on Uniform Traffic Control Devices throughout chapter 296-155 WAC.
A commenter requested that references to the MUTCD should be specific to the current edition of revision. Several commenters explained that in past rulemakings other agencies were not able to reference the National Electric Safety Code in generality. Instead they were required to cite a specific edition or revision.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The Administrative Procedures Act, chapter 34.05 RCW, allows the department to adopt, by reference, rules from other agencies that have been through the public comment process. As a result, the department has chosen to adopt the MUTCD by reference. As a result, interested parties may provide comments about any modification to the MUTCD during the Department of Transportation's rulemaking process. For information, see the MUTCD website at <a href="http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm">http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm</a>.</p> <p>By referring the MUTCD generally, the department will clarify to employers that any updates or newer version of the MUTCD apply and the department will avoid rulemaking whenever the MUTCD is updated.</p>
A commenter stated that chapter 468-95 WAC has incorporated some temporary traffic control measures that are different than MUTCD. The commenter suggested that the department should incorporate these changes into chapter 296-155 WAC.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The changes in chapter 468-95 WAC can be found at <a href="http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm">http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm</a>. Also, the department has added this link to WAC 296-155-305, Signaling and Flaggers.</p>
Several commenters explained that on the L&I website, there is currently no link or reference to the DOT changes to the MUTCD or reference to chapter 468-95 WAC.	The department agrees with the commenter. This information can be found at <a href="http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm">http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm</a> . The department has added this link to WAC 296-155-305, Signaling and Flaggers.

Comment Received	Agency Response
<p>A commenter explained that when training employees and giving books to flaggers and workers in the field, it's easier to give them one manual instead of multiple manuals. In addition, it is easier for them to understand and comply with. The commenter found in the proposed WAC 296-155-305 (3)(a) and (b) it references the MUTCD just a word "MUTCD" and does not specify which version or edition it is referring to. Several commenters requested that either at the beginning of the section have one definition of which MUTCD we need to follow and avoid adding the language into each specific subsection of that section.</p>	<p>The department agrees with the commenter. As a result, the adopted version of WAC 296-155-305, Signaling and Flaggers, has one definition of the MUTCD that applies to any reference of the Manual on Uniform Traffic Control Devices throughout chapter 296-155 WAC.</p>
<p>Several commenters expressed concern for the definitions of the words "shall," "may," "must," and "should." They suggested incorporating either the same definitions as found in chapter 296-24 WAC or to be consistent with what the MUTCD Millennium Edition has adopted for definitions.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The terms "shall" and "must" mean that the provisions are mandatory. The term "should" indicates guidance and the guidance must be considered.</p>
<p>A commenter asked if all road jobs require a traffic control plan (city or county roads). The commenter also asked if the time (1 hour or 2 hours, etc.) spent on the road has any variances on a traffic control plan. They asked if, in the near future, all road jobs going to be requiring a traffic control plan.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>WAC 296-155-305(7)(b) only requires traffic control plan when flagger is used on a job that lasts more than one day. The Department of Transportation requirements may differ.</p>
<p>A commenter observed that many flaggers 1) are smoking and not paying attention to their surroundings and 2) are not always engaged in the task talking to co-workers and facing away from traffic. The commenter stated that the level of attention and the frustration of drivers might be contributing to this problem when they see a flagger not directing traffic holding a sign smoking a cigarette and talking on the side of the road.</p> <p>The commenter suggested that the rules should eliminate</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The duties of flaggers are described in WAC 296-155-305 (9).</p>



Comment Received	Agency Response
smoking and require flaggers to face traffic and continually scan the work area. The commenter added that smoking and socializing could be allowed on breaks, in a safe area, when they are not required to direct or control traffic.	
A commenter suggested that people on worksites should place themselves in a position where they are protected from traffic with an escape path and not between fixed objects. In addition, they suggested, where heavy equipment is used, distance and a portable warning horn should be required to alert drivers.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The department believes that WAC 296-155-305 (8)(c), which sets out requirements for advance warning signs, and WAC 296-155-305(9)(a), which sets out requirements for the location of flagger stations, should eliminate exposure to equipment operated on a construction site.</p>
A commenter believed that the wording of the proposed changes will place too great a burden on the City of Everett and other municipal governments without a significant reduction in risk to workers-on-foot, the traveling public, or pedestrians. The proposed rule was interpreted to affect several City Utility jobs each week, due to the way municipalities schedule work between City work crews, even within a single department.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>This requirement in the proposed version of WAC 296-155-305(7)(b) was effective before the filing of this rule proposal. In addition, the Department of Transportation requires a traffic control plan for all jobs, regardless of duration.</p>
The commenter stated that the majority of municipal jobs affected by this rule would include three to six crewmembers and the flagger would be intricately involved in the job set-up. The commenter recommended that the department change the traffic-control plan threshold so it only includes municipal governments and public utilities performing larger with heavy construction traffic, or jobs that use a flagger for three or more days. The commenter believed that this adjustment would be consistent with MUTCD guidelines and would help the rule more effectively target the hazards WISHA rightly intends to address.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The requirement for a traffic control plan on jobs lasting longer than one day in WAC 296-155-305(7)(b) applies to all employers regardless of size. This requirement has been effective since the adoption of this section in 2000.</p>
"Traffic Control Plans," as defined in the proposed rule change,	The department chose not to make a change to chapter 296-

Comment Received	Agency Response
<p>include more elements than the plans described in the MUTCD. The City recommends using the “Typical Applications” found in the MUTCD and WSDOT’s “Work Zone Traffic Control Guidelines,” with modifications to meet the safety needs of flaggers. The new “Typicals” would then be allowed as a substitute for the proposed “Site-Specific Traffic Control Plan.”</p>	<p>155 WAC based on this comment.</p> <p>This requirement was effective before the filing of this rule proposal.</p>
<p>The commenter expressed concern about making minor changes to the MUTCD, which already governs the area of temporary traffic control. The commenter believed that intermixing changes throughout the guidance of the MUTCD may this can create some confusion and may not be obvious to those that use the MUTCD as it's intended to be used.</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>Employers have been required to comply with the safety rules as well as the Manual on Uniform Traffic Control Devices. In 2000, the Washington State legislature did not believe that the Manual on Uniform Traffic Control Devices was sufficient for the protection of flaggers in Washington state. As a result, the legislature requested that the department increase protection for flaggers. In order to comply with the legislature’s request, the department expanded requirements beyond the Manual on Uniform Traffic Control Devices.</p>
<p>A commenter expressed concern for the requirements relating to mobile flagging operations in WAC 296-155-305(8). They believed that the new language allows for a warning sign to be placed closer to the flagger so that the sign is visible from the flagger station. They specified that their concern is that someone may interpret this to allow moving the sign as close as they needed, which would then encroach on the minimum spacing distance that we would need to maintain for that sign. The commenter suggested revising the statement slightly to still stay within the minimum advanced warning sign distance.</p>	<p>The department agrees with the commenter. As a result, the adopted version of WAC 296-155-305 (8)(c) includes additional language in the exemption to read, “If terrain does not allow a motorist to see the flagger from the ‘flagger ahead’ sign, the distance between the flagger and the sign must be shortened to allow visual contact, but in no case can the distance be less than the distance specified in Table 1, Advanced Warning Sign Spacing.”</p>
<p>A commenter stated that the distances in the tables of WAC 296-155-305 will be changing in the 2003 version of the MUTCD. The Department of Transportation is currently reviewing and adopting 2003 version. The commenter stated</p>	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The department will evaluate if the Manual on Uniform Traffic</p>

Comment Received	Agency Response
that when the Department of Labor and Industries refers to the current adopted version, instead of referring to a specific year of MUTCD, and includes portions of the MUTCD from a specific year in the chapter 296-155 WAC, those portions are subject to change and would have to be changed again further on down the road.	Control Devices is updated and may initiate rulemaking. However, the requirements of WAC 296-155-305, Signaling and Flaggers, have been expanded beyond requirements of the Manual on Uniform Traffic Control Devices.
A commenter expressed concern for the references to the Manual on Uniform Traffic Control in WAC 296-155-300 (b).	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The department has repealed WAC 296-155-300, Accident prevention signs and tags.</p>
A commenter suggested that WAC 296-155-200 first state that the requirement applies when employees are in areas and under circumstances where their job duties are performed in close proximity to moving vehicles.	The department agrees with the commenter. As a result, WAC 296-155-200, General requirements for personal protective equipment (PPE) has been reformatted and reorganized to more clearly state when the requirements apply.
<p>A commenter asked why the high visibility garment requirements in WAC 296-155-655 (4) only apply when there is exposure to public vehicular traffic and WAC 296-155-200 applies to any vehicular traffic.</p> <p>The commenter suggested that the department apply the high visibility garment requirements only when employees are exposed to public vehicular traffic. The commenter believed that a citation for an employee not wearing a high visibility vest when helping a driver maneuver a vehicle, with no other traffic around, would not be warranted.</p>	The adopted version of WAC 296-155-655 (4), General protection requirements, has deleted the word “public.” This change addresses the inconsistency between the application of requirements in WAC 296-155-200 and WAC 296-155-655. In addition, it clarifies that the requirements of WAC 296-155-200, General requirements for personal protective equipment (PPE), apply to this situation the commenter addresses.
A commenter requested information regarding the state's real intention for enforcing the PPE requirements of WAC 296-155-200 or for the department to give some examples of what it might look like to employers. The commenter asked if employees working behind traffic control devices and trucks are	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The department believes that the majority of traffic control devices do not engineer out the hazards of a worksite, instead</p>

Comment Received	Agency Response
considered exposed and asked if they needed to wear vests.	they provide warning and direction. As a result, employees working behind traffic control devices are still considered exposed and are required to wear a high visibility garment and comply with WAC 296-155-200, General requirements for personal protective equipment (PPE).
A commenter suggested that this rule seems to be blurring the lines between L&I and WSDOT's jurisdiction.	<p>The department chose not to make a change to chapter 296-155 WAC based on this comment.</p> <p>The two agencies have two different missions. The Department of Labor and Industries' WISHA division sets minimum requirements to ensure safety of the workplace. The Department of Transportation ensures the safety of all motoring public. As a result, WISHA is responsible for the safety and health of employees (i.e. flaggers) on any worksite.</p>